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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

IN RE KOREAN RAMEN ANTITRUST  
 LITIGATION

Case No. 3:13-cv-04115-WHO

**PLAINTIFFS' MEMORANDUM OF POINTS  
 AND AUTHORITIES IN OPPOSITION TO  
 DEFENDANTS' OBJECTION TO CERTAIN  
 EXHIBITS AND DESIGNATIONS OF THE  
 DEPOSITION OF SOO CHANG AHN**

This Document Relates to:

ALL ACTIONS

Date: November 14, 2018  
 Time: TBD  
 Courtroom: 2, 17<sup>th</sup> Floor  
 Judge: Hon. William H. Orrick

1 Plaintiffs submit this memorandum of points and authorities in response to Defendant  
 2 Ottogi's Objections, dated November 14, 2018, concerning the witness statement of Soo Chang  
 3 Ahn [ECF# 795].

4 Plaintiffs propose to introduce two witness statements by Mr. Soo Chang Ahn of Samyang  
 5 which he reviewed, signed and submitted to the KFTC.

- 6 • The first statement (Exh. 158) is dated April 1, 2010. At his  
 7 deposition, Mr. Ahn was shown the document, and he testified under  
 8 oath that his signature appeared on both the first and last pages of the  
 9 exhibit (1/12/16 TR 27:18-28:10). He confirmed that he reviewed the  
 10 statement before it was submitted to the KFTC (TR 29:15-19), that he  
 11 believed it was true and correct at the time he signed it (1/12/16 TR  
 12 29:20-25), and he maintained that belief at the time he was deposed  
 13 (1/12/16 TR 30:1-5).
- 14 • The second statement (Exh. 156) is dated September 5, 2011. At his  
 15 deposition, Mr. Ahn was shown the document, and he testified under  
 16 oath that he had signed each page of the statement (1/12/16 TR 40:12-  
 17 41:09), that he reviewed it before it was submitted to the KFTC  
 18 (1/12/16 TR 41:9-12), that he believed that the statements contained in  
 19 it were true and correct at the time that he submitted the statement to  
 20 the KFTC (1/12/16 TR 41:13-17), and that he maintained that belief at  
 21 the time he was deposed (1/12/16 TR 41:18-25).

22 In the spirit of compromise, Plaintiffs have agreed to withdraw Trial Exhibit 159.

23 In its April 24, 2018 Order concerning Motions in Limine (ECF No. 740), the Court denied  
 24 Defendants' motion to exclude all such statements, stating that admissibility would be determined  
 25 on a case-by-case basis. The Court did provide the following guidance, however, which clearly  
 26 applies in the case of Mr. Ahn's two witness statements:

27 Generally, as discussed in the Order on the motions for summary  
 28 judgment, the Samyang witnesses provide some basis for their opinions  
 (even if disputed or "walked back" in deposition). The Samyang witness  
 statements also appear to be made adequately close in time to the at issue  
 events, many were subject to later adoption through deposition or  
 otherwise under oath, and they may otherwise be admissible under various  
 hearsay exceptions.

*Id.* at 5.

First, Mr. Ahn's Witness Statements are admissible under the adopted testimony exception  
 to Fed. R. Civ. P. 43(a). *See Kuntz v. Sea Eagle Diving Adventures, Corp.*, 199 F.R.D. 665, 668 (D.  
 Haw. 2001) (a declaration may be adopted as direct testimony if the witness testifies about the  
 declaration under oath and is subject to cross and redirect examination).

1           Second, because the Witness Statements themselves were subject to cross examination at  
 2 deposition, they are also admissible under the residual exception of Fed. R. Evid. 807, as they have  
 3 circumstantial guarantees of trustworthiness. *Id.* (declaration had “circumstantial guarantees of  
 4 trustworthiness, especially because the declarants are subject to live cross-examination”). For  
 5 example, during cross-examination, Defendants were able to determine that Mr. Ahn lacked  
 6 personal knowledge concerning a “President’s Meeting” that he had discussed in Paragraph 4 of the  
 7 April 1, 2010 Statement. As a result, Plaintiffs have agreed to redact this portion of that Witness  
 8 Statement (Exh. 158).

9           Third, Mr. Ahn’s Witness Statements are declarations against interest because the testimony  
 10 in the Witness Statements contain admissions of participation in illegal conduct engaged in by  
 11 declarants, and they are bolstered by significant additional corroborating evidence. *See* Fed. R.  
 12 Evid. 804(b)(3).

13           Defendants may cherry pick certain testimony in Mr. Ahn’s Witness Statements to try to  
 14 poke holes at their reliability, but these issues go to the weight of the evidence, and not its  
 15 admissibility. *See Jackson v. Cty of San Bernardino*, 194 F. Supp. 3d 1004, 1008 (C.D. Cal. 2016)  
 16 (“a motion in limine should not be used to resolve factual disputes or weigh evidence”) (quoting  
 17 *C&E Services, Inc. v. Ashland, Inc.*, 539 F. Supp. 2d 316, 323 (D.D.C. 2008)). These issues should  
 18 be left to the jury to decide. *Id.* (citing *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150  
 19 (2000)).<sup>1</sup> There is no reason to exclude, wholesale, an entire Witness Statement merely because  
 20 Defendants have pointed to certain supposed weaknesses in the testimony.

21  
 22  
 23  
 24  
 25 <sup>1</sup> For example, Nongshim argued to the Court earlier today that that the “evidence” demonstrates  
 26 that Mr. Ahn wasn’t at the March 2001 Ramen Conference, because his signature does not appear  
 27 on the meeting minutes. While this is a disputed factual issue not appropriate for exclusion by the  
 28 Court, Plaintiffs note that that Mr. Ahn testified that he personally attended the meeting, and the  
 statements he provided in his signed statement to the KFTC “were from [his] personal experience  
 after attending that meeting.” 1/13/16 TR at 46:21-47:2, 1/13/16 TR at 98:5-99:6).

DATED: November 14, 2018

*s/ Christopher L. Lebsock*

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